

DOCKET FILE COPY ORIGINAL

**CROWELL & MORING**

1001 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2595

(202) 624-2500

CABLE: CROMOR

FACSIMILE (RAPICOM): 202-628-5116

W. U. I. (INTERNATIONAL) 64344

W. U. (DOMESTIC) 89-2448

**August 18, 1993**

**RECEIVED**

**AUG 18 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

SUITE 1200

2010 MAIN STREET

IRVINE, CALIFORNIA 92714-7217

(714) 263-8400

FACSIMILE (714) 263-8414

1 SERJEANTS' INN

LONDON EC4Y 1LL

44-71-936-3036

FACSIMILE 44-71-936-3035

**3033:kkw**  
**29558.010**

BY HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: Amendment of Section 76.51 of the  
Commission's Rules, MM Docket No. 93-207

Dear Mr. Caton:

Enclosed for filing on behalf of Fouce Amusement Enterprises, Inc. are an original and four (4) copies of Comments concerning the proposed amendment of Section 76.51 to include Riverside in the Los Angeles-San Bernardino-Corona-Fontana, California hyphenated market, MM Docket No. 93-207.

If there are any questions concerning this matter, please contact the undersigned.

Very truly yours,

*Katherine K. White*

Katherine K. White

Enclosures

No. of Copies rec'd  
List A B C D E

044

AUG 18 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Amendment of Section 76.51,  
Major Television Markets  
(Los Angeles-San Bernardino  
Corona-Fontana-Riverside)**

MM Docket No. 93-207

**COMMENTS OF FOUCÉ**  
**AMUSEMENT ENTERPRISES, INC.**

Pursuant to Section 1.415 of the Commission's Rules, Fouce Amusement Enterprises, Inc. ("Fouce"), licensee of television station KRCA (TV), Riverside, California, hereby submits its Comments with regard to the Notice of Proposed Rulemaking, MM Docket No. 93-207 (July 15, 1993), proposing to amend Section 76.51 of the Commission's Rules to redesignate the Los Angeles-San Bernardino-Corona-Fontana television market as the "Los Angeles-San Bernardino-Corona-Fontana-Riverside" market. As set forth in the Emergency Petition for Expedited Rulemaking ("Petition," attached hereto), which formed the basis for this proceeding, there are compelling reasons to add Riverside to the hyphenated market designation. For the reasons stated in the Petition and in these Comments, the amendment to Section 76.51 should be adopted by the Commission.

**I. THE FACTORS PREVIOUSLY CONSIDERED BY THE COMMISSION  
IN AMENDING SECTION 76.51 COMPEL INCLUSION OF  
RIVERSIDE IN THE LOS ANGELES HYPHENATED MARKET.**

In earlier modifications of market designations, the Commission considered four factors in making its determinations. See Fresno-Visalia, California, 57 R.R.2d 1122, 1124 (1985); Orlando-Daytona Beach-Melbourne-Cocoa, Florida, 102 FCC 2d 1062, 1073 (1985). All favor the addition of Riverside to the Los Angeles hyphenated market designation:

1. The Commission has considered the distances between the existing designated communities and the community proposed to be added to the market designation. Fresno, 57 R.R.2d at 1124; Orlando, 102 FCC 2d at 1073. The distances between Riverside and the existing communities in the hyphenated market clearly favor inclusion of Riverside in the market. For example, San Bernardino, which is already included in the hyphenated market, lies at a greater distance from the center of Los Angeles than does Riverside, yet is already entitled to royalty-free mandatory carriage on Los Angeles cable systems. Riverside is contiguous with Corona, and is virtually encircled by San Bernardino, Corona, and Fontana. See Petition at Ex. A.

2. The Commission has considered whether cable carriage would extend to areas beyond the station's Grade B signal coverage area. Fresno, 57 R.R.2d at 1124; Orlando, 102 FCC 2d at 1073. KRCA's market will not be expanded to any significant degree. The Grade B contour of KRCA is similar to the Grade B contours of

other stations in the hyphenated market, and already extends beyond Los Angeles to the approximate limits of its 35-mile zone. See Petition at Ex. B. Designation of Riverside as part of the market will thus entitle KRCA to royalty-free cable carriage within its current service area.

3. The Commission has looked for a showing of a particularized need by the station requesting the change. Fresno, 57 R.R.2d at 1125; Orlando, 102 FCC 2d at 1074. KRCA has demonstrated such a particularized need for redesignation of the market, given the severe competitive disadvantage under which it would otherwise be forced to operate, and the fact that it would unfairly be required to pay substantial copyright royalty reimbursements not charged against other stations in the same market, or be required to forego the cable carriage within its ADI mandated by the Cable Act of 1992 and the Commission's Rules.

4. Finally, the Commission has sought an indication of benefit to the public from the proposed change. Fresno, 57 R.R.2d at 1125; Orlando, 102 FCC 2d at 1074. Assuring KRCA access to cable subscribers in Los Angeles and the San Fernando Valley will provide substantial benefits to the public through the variety and quality of the programs it offers, particularly because of its focus on foreign-language and minority programming.

**II. RIVERSIDE IS PART OF A SINGLE TELEVISION MARKET,  
CURRENTLY DESIGNATED AS THE LOS ANGELES-SAN  
BERNARDINO-CORONA-FONTANA MARKET.**

There can be no question that Riverside, California is part of the Los Angeles television market. Geographically, the com-

munity is located at approximately the same distance from the center of Los Angeles as, and is virtually surrounded by, the cities of San Bernardino, Corona and Fontana, which are included as listed communities in the hyphenated market designation set out in Section 76.51. See Petition at Ex. A. Indeed, Riverside's 35-mile zone is virtually entirely encompassed within the combined 35-mile zones of San Bernardino, Corona and Fontana, resulting in the anomaly of a "smaller" television market being wholly contained within a major market. See Newark, New Jersey, 47 FCC 2d 752 (1974).

KRCA's Grade B contour completely encompasses all of the communities currently designated as parts of the hyphenated market, as do those of the other stations licensed to the listed communities. See Petition at Ex. B; see also Television & Cable Factbook, Stations Vol. 61, pp. A-123 - A-136 (1993). KRCA also provides city grade service to Los Angeles. See Petition at Ex. B. Since the area thus relied on by KRCA for economic support is contained within, or virtually the same as, the area relied on by the Los Angeles, San Bernardino, Corona, and Fontana stations, all of the stations compete in the same market. The Commission has concluded in even less compelling circumstances that communities such as these constitute a single television market. See, e.g., Orlando, 102 FCC 2d at 1070.

As with the other stations whose service contours cover the market, KRCA is licensed to serve the Los Angeles metropolitan

area. In addition, its transmitter is located at the same site on Sunset Ridge as those of KSCI and KZKI, both licensed to "listed" community San Bernardino. But KRCA was not in existence in 1972, when the market designations were initially determined. Riverside could thus not have been considered for inclusion in the original market designation. However, given the facts presented here, the Commission doubtless would have designated Riverside as part of the Los Angeles hyphenated market when it initially established the major market list. See Id. at 1072.

**III. KRCA WILL BE AT A SEVERE COMPETITIVE DISADVANTAGE  
UNLESS ACCORDED THE SAME MANDATORY CARRIAGE STATUS  
AS THE OTHER STATIONS IN THE HYPHENATED MARKET.**

Under the copyright law, cable television systems must pay royalty fees for carriage of distant, as opposed to local, television stations. Stations licensed to communities specifically designated as part of a major hyphenated market are considered local for all cable systems within the 35-mile zones of all of the listed communities. Since Riverside was not included as part of the 1972 designation of the market, however, it is considered distant in areas more than 35 miles from Riverside, notably including significant portions of Los Angeles and the San Fernando Valley. KRCA has received notices from various cable systems within the ADI advising it pursuant to new Section 76.58(d) of the Commission's Rules that they will not provide mandatory carriage unless it agrees to reimburse well over two million dollars annually in copyright royalty fees.

KRCA competes for audience and revenues with network affiliated and independent stations licensed to Los Angeles, San Bernardino, Corona, and Fontana. Each of these stations is entitled to royalty-free mandatory carriage on cable systems within the entire market by virtue of their communities' designation as part of the hyphenated market. KRCA will be severely -- perhaps fatally -- disadvantaged in its ability to compete in the market if it cannot obtain carriage on the local market cable systems on the same royalty-free basis as all its competitors.

The fact that KRCA is an independent station increases its competitive burden. Unlike the other independent stations in the hyphenated market, which are entitled to mandatory cable carriage, KRCA cannot assure program owners or advertisers of access to the entire market, which it serves over the air but needs cable carriage to reach effectively. KRCA's competitive position will thus be further undermined.

**IV. KRCA CANNOT CONTINUE TO SERVE THE COMMUNITY  
WITHOUT ACCESS TO THE ENTIRE MARKET.**

Access to the entire Los Angeles market is controlled to a large extent by cable television systems, since terrain features make over-the-air reception difficult in various heavily populated areas. Because of copyright fees potentially as high as \$2 million per year being demanded for its carriage, KRCA may be unable to gain the same access as the other stations with which it

competes.<sup>1/</sup> Inclusion of Riverside in the market designation will enable the cable systems to carry KRCA without incurring additional copyright royalty liability, thus eliminating the competitive inequality of the present designation. Failure to rectify this anomalous situation may result in the demise of KRCA, or, at a minimum, a drastic reduction in its ability to provide service.<sup>2/</sup> On the other hand, allowing equal treatment of KRCA by local cable systems will not expand its reach significantly beyond its Grade B signal coverage or beyond the service areas of the other stations in the market that are already entitled to royalty-free carriage.

#### CONCLUSION

Redesignation of the Los Angeles-San Bernardino-Corona-Fontana market to include Riverside will not only place KRCA on a level playing field with its competitors, but will comport with the stated purpose of the FCC to ensure that stations have access

---

<sup>1/</sup> Currently, KRCA is seeking to negotiate fair copyright royalty reimbursement agreements with some cable systems in order to initiate carriage pursuant to the must carry rules. Some of those cable systems, however, are refusing to commence carriage unless KRCA agrees to reimbursements for more than three years, with no opportunity to cancel no matter how high the cable royalties may climb as a result of the system's own actions.

<sup>2/</sup> KRCA provides children's programming and locally produced public affairs programming. It recently commenced broadcasting a format featuring Asian and other foreign language programming that serves the interests of large minority populations in the market.



to cable subscribers and subscribers have access to all stations in the market. KRCA respectfully requests that the Commission promptly approve this redesignation, so that mandatory cable carriage of KRCA on the same basis as all other stations within the market may begin as soon as possible.

Respectfully submitted,

FOUCE AMUSEMENT ENTERPRISES, INC.

By Katherine K. White  
John I. Stewart, Jr.  
Katherine K. White

CROWELL & MORING  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Its Attorneys

August 18, 1993



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 76.51,	)	
Major Television Markets	)	RM-
(Los Angeles-San Bernardino	)	
Corona-Fontana-Riverside)	)	

To: Chief, Mass Media Bureau

**EMERGENCY PETITION FOR EXPEDITED RULEMAKING**

Pursuant to Section 1.401 of the Commission's Rules, Fouce Amusement Enterprises, Inc. ("Fouce"), licensee of television station KRCA, Riverside, California, hereby petitions the Commission to institute an expedited rulemaking proceeding to amend Section 76.51 of its Rules to redesignate the Los Angeles-San Bernardino-Corona-Fontana television market as the "Los Angeles-San Bernardino-Corona-Fontana-Riverside" market. This amendment is necessary on an emergency basis in order to avoid discriminatory and irrational application of the Commission's must-carry rules to KRCA's immediate and severe detriment.

I. **RIVERSIDE IS PART OF A SINGLE TELEVISION MARKET, CURRENTLY DESIGNATED AS THE LOS ANGELES-SAN BERNARDINO-CORONA-FONTANA MARKET.**

There can be no question that Riverside, California is part of the Los Angeles television market. Geographically, the community is located at approximately the same distance from the

center of Los Angeles as, and is virtually surrounded by, the cities of San Bernardino, Corona and Fontana, which are included as listed communities in the hyphenated market designation set out in Section 76.51. See Exhibit A. Indeed, Riverside's 35-mile zone is virtually entirely encompassed within the combined 35-mile zones of San Bernardino, Corona and Fontana, resulting in the anomaly of a "smaller" television market being wholly contained within a major market. See Newark, New Jersey, 47 FCC 2d 752 (1974).

KRCA's Grade B contour completely encompasses all of the communities in the existing hyphenated market, as do those of the other stations licensed to the listed communities. See Exhibit B; see also Television & Cable Factbook, Stations Vol. 61, pp. A-123 - A-136 (1993). KRCA also provides city grade service to Los Angeles. See Exhibit B. Since the area thus relied on by KRCA for economic support is contained within, or virtually the same as, the area relied on by the Los Angeles, San Bernardino, Corona, and Fontana stations, all of the stations compete in the same market. The Commission has concluded in even less compelling circumstances that communities such as these constitute a single television market. See, e.g., Orlando-Daytona Beach-Melbourne-Cocoa, Florida, 102 FCC 2d 1062 (1985).

As with the other stations whose service contours cover the market, KRCA is licensed to serve the Los Angeles metropolitan area. In addition, its transmitter is located at the same site on Sunset Ridge as those of KSCI and KZKI, both licensed to "listed"

community San Bernardino. But KRCA was not in existence in 1972, when the market designations were initially determined. Riverside could thus not have been considered for inclusion in the original market designation. However, given the facts presented here, the Commission doubtless would have designated Riverside as part of the Los Angeles hyphenated market when it initially established the major market list. See Id. at 1072.

**II. KRCA WILL BE AT A SEVERE COMPETITIVE DISADVANTAGE  
UNLESS ACCORDED THE SAME MANDATORY CARRIAGE STATUS  
AS THE OTHER STATIONS IN THE HYPHENATED MARKET.**

Under the copyright law, cable television systems must pay royalty fees for carriage of distant, as opposed to local, television stations. Stations licensed to communities specifically designated as part of a major hyphenated market are considered local for all cable systems within the 35-mile zones of all of the listed communities. Since Riverside was not included as part of the 1972 designation of the market, however, it is considered distant in areas more than 35 miles from Riverside, notably including significant portions of Los Angeles and the San Fernando Valley. KRCA has received notices from various cable systems within the ADI advising it pursuant to new Section 76.58(d) of the Commission's Rules that they will not provide mandatory carriage unless it agrees to reimburse well over two million dollars annually in copyright royalty fees.

KRCA competes for audience and revenues with network affiliated and independent stations licensed to Los Angeles, San

Bernardino, Corona, and Fontana. Each of these stations is entitled to royalty-free mandatory carriage on cable systems within the entire market by virtue of their communities' designation as part of the hyphenated market. KRCA will be severely -- perhaps fatally -- disadvantaged in its ability to compete in the market if it cannot obtain carriage on the local market cable systems on the same royalty-free basis as all its competitors.

The fact that KRCA is an independent station increases its competitive burden. Unlike the other independent stations in the hyphenated market, which are entitled to mandatory cable carriage, KRCA cannot assure program owners or advertisers of access to the entire market, which it serves over the air but needs cable carriage to reach effectively. KRCA's competitive position will thus be further undermined.

### **III. KRCA CANNOT CONTINUE TO SERVE THE COMMUNITY WITHOUT ACCESS TO THE ENTIRE MARKET.**

Access to the entire Los Angeles market is controlled to a large extent by cable television systems, since terrain features make over-the-air reception difficult in various heavily populated areas. Because of the huge copyright fees being demanded for its carriage, KRCA would be unable to gain the same access as the other stations with which it competes. Inclusion of Riverside in the market designation will enable the cable systems to carry KRCA without incurring additional copyright royalty liability, thus eliminating the competitive inequality of the present designation. Failure to rectify this anomalous situation may result in the

demise of KRCA, or, at a minimum, a drastic reduction in its ability to provide service.<sup>1</sup> On the other hand, allowing equal treatment of KRCA by local cable systems will not expand its reach significantly beyond its Grade B signal coverage or beyond the service areas of all the other stations in the market, which are already entitled to royalty-free carriage.

**IV. THE FACTORS PREVIOUSLY CONSIDERED BY THE COMMISSION  
IN AMENDING SECTION 76.51 COMPEL INCLUSION OF  
RIVERSIDE IN THE LOS ANGELES HYPHENATED MARKET.**

In earlier modifications of market designations, the Commission considered four factors in making its determinations.

Fresno-Visalia, California, 57 R.R.2d 1122, 1124 (1985); Orlando-Daytona Beach-Melbourne-Cocoa, Florida, 102 FCC 2d 1062, 1073 (1985). These factors are identified separately below. All favor the addition of Riverside to the Los Angeles hyphenated market designation:

1. The distances between Riverside and the existing communities in the hyphenated market clearly favor inclusion of Riverside in the market. For example, San Bernardino, which is already included in the hyphenated market, lies at a greater distance from the center of Los Angeles than does Riverside, yet is already entitled to royalty-free mandatory carriage on Los Angeles cable systems.

---

<sup>1</sup> KRCA provides children's programming and locally produced public affairs programming. It has broadcast home shopping programming in the past, but is commencing a format featuring Asian and other foreign language programming that serves the interests of large minority populations in the market.

2. KRCA's market will not be expanded to any significant degree. The Grade B contour of KRCA is similar to the Grade B contours of the other stations in the hyphenated market, and already extends beyond Los Angeles to the approximate limits of its 35-mile zone. See Exhibit B. Designation of Riverside as part of the market will thus entitle KRCA to royalty-free cable carriage principally within its current service area.

3. KRCA has shown a particularized need for redesignation of the market, given the severe competitive disadvantage under which it would otherwise be forced to operate.

4. Assuring KRCA access to cable subscribers in Los Angeles and the San Fernando Valley will provide substantial benefits to the public through the variety and quality of the programs it offers, particularly because of its focus on foreign-language and minority programming.

#### CONCLUSION

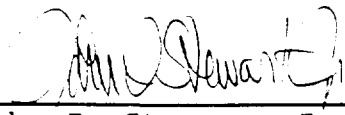
Redesignation of the Los Angeles-San Bernardino-Corona-Fontana market to include Riverside will not only place KRCA on a level playing field with its competitors, but will comport with the stated purpose of the FCC to ensure that stations have access to cable subscribers and subscribers have access to all stations in the market. KRCA respectfully requests the Commission promptly



to commence an expedited proceeding to accomplish this redesignation, so that mandatory cable carriage of KRCA on the same basis as all other stations within the market may begin as soon as possible.

Respectfully submitted,

FOUCE AMUSEMENT ENTERPRISES, INC.

By   
\_\_\_\_\_  
John I. Stewart, Jr.  
Katherine K. White

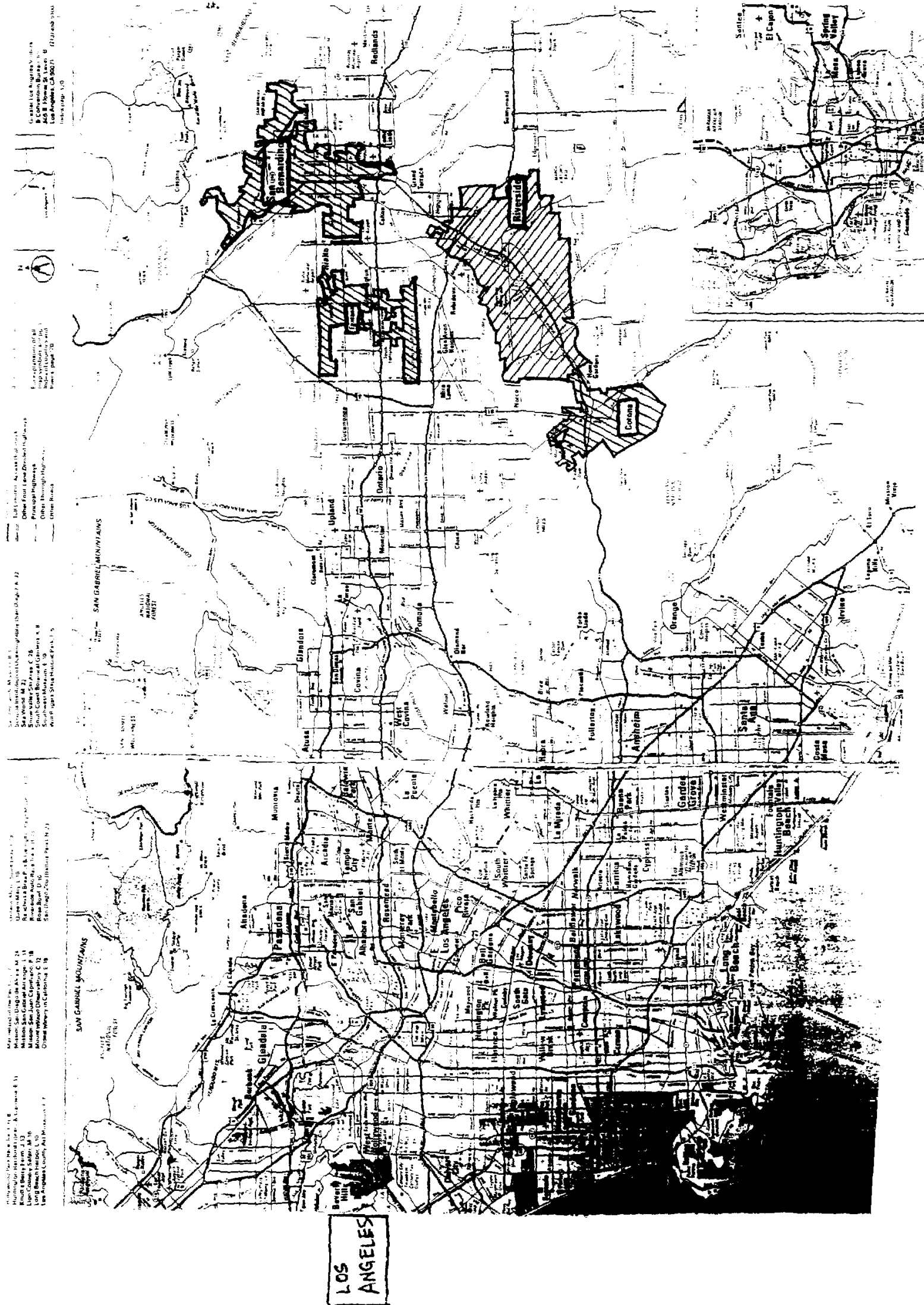
CROWELL & MORING  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Its Attorneys

May 5, 1993

A

Approximate city boundaries  
of Riverside, San Bernardino,  
Corona and Fontana





FROM NOVEMBER 1991  
ENGINEERING REPORT

**FIGURE 1**  
**COMPUTED CONTOURS FOR**  
**KRCA(TV), RIVERSIDE, CALIFORNIA**  
**CHANNEL 62 3720 kW 723 METERS**

**CONEN, DIPPELL and EVERIST, P.C. Consulting Engineers Washington, D.C.**

